IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 34/2007

Mr. Ashok Narayan Vernekar,
aged 50 years, married,
r/o. Flat No.S-1, IInd Floor,
Ashok Samrat Building,
Davorlim, Salcete, Goa. ..... Petitioner.

V/s

1) Ms. Umabai Gopinath Kesarkar,
since deceased, represented by her heirs

a) Mr. Anant Kesarkar,
major of age, Indian National, and
his wife,

b) Ms. Megha Anant Ksarkar,
major of age, Indian National,

both residents of Aquem, Margao, Goa.

2) The President,
Administrative Tribunal,
Panaji, Goa.

3) The Deputy Collector and
District Level Rent Controller,
Margao, Salcete, Goa. ..... Respondents.

Mr. Amit Palekar, Advocate for the petitioner.

Mr. A. F. Diniz, Advocate for the respondent No.1(a).

CORAM : S.K. SHAH, J.

DATE : 7th February, 2007.

ORAL JUDGMENT :

Heard. Rule, made returnable forthwith. Heard finally by consent of the parties.

2. This writ petition is filed against the order passed by the Administrative Tribunal, Goa whereby the applications filed by the petitioner for condonation of delay in filing the application for brining the legal representatives of the deceased respondent No.1 on record and for setting aside abatement, came to be rejected. Simultaneously, the application made by the heirs of respondent No.1 for abatement of the eviction appeal, was allowed.

3. The eviction appeal was filed by the petitioner. During the pendency of the said appeal, respondent No.1 expired on 27.9.2005. The learned Advocate representing the respondent No.1 intimated the death of respondent No.1 to the Tribunal by filing written precipee dated 30.9.2005. It is an undisputed position that the Counsel representing the petitioner was absent before the Tribunal. No steps were taken by the petitioner to bring the legal representatives of the deceased respondent No.1 on record, As a result, on 18.8.06, the legal heirs of the deceased

respondent No.1 filed an application before the Tribunal praying for dismissal of the appeal as having been abated. It is, thereafter, that the petitioner on 30.8.2006, filed the application seeking permission to bring the legal representatives of the deceased respondent No.1 on record along with an application for condonation of delay in bringing the LRs. of the deceased respondent No.1 on record and also an application for setting aside the abatement.

4. The learned Tribunal, rejected the applications filed by the petitioner herein and allowed the application filed by the heirs of the deceased respondent No.1, as a result, the eviction appeal was abated. It is this order which is assailed in this writ petition.

5. It is contended on behalf of the petitioner that the petitioner was not aware of the fact that the respondent No.1 had expired on 27.9.05. In the application that was filed before the Tribunal, the petitioner alleged that he realised about the death of the respondent No.1 for the first time on 29.8.06 when the Advocate for the petitioner went through the file of the appeal and it is, thereafter, that immediately the petitioner made the application.

6. I have heard the Counsel on both sides and also perused the impugned order passed by the trial Court. It has been submitted before me that the petitioner was negligent in not going through the record of the eviction appeal and also not taking care to peruse the record, and as a result of that, the delay in bringing the LRs of the deceased respondent No.1 on record was caused. The learned trial Court went to the extent of observing that the applications for setting aside the abatement and for bringing the LRs. of the deceased respondent No.1 on record was malafide.

7. What is pertinent to be noted is that neither the learned Advocate for the respondent in his submissions submitted, nor the learned Tribunal in its order anywhere observed, that the petitioner, in fact, had knowledge of death of respondent No.1. It being factual position, the aspect of negligence or malafide in that matter cannot carry the point in support of the order passed by the learned Tribunal. What was required to be considered by the Tribunal was that the petitioner had the knowledge of the death of respondent No.1. The negligence on the part of the petitioner or his Advocate not being diligent in perusing the record, would not be a sufficient ground for substantiating the order of rejection of the applications for condonation of delay in bringing the LRs on record and

for setting aside the abatement.

8. It is important to be noted that by virtue of the provisions of Order 22, Rule 10-A of C.P.C. the Tribunal is duty bound to give notice of death to the other party. Then it was a duty cast on the Tribunal to inform the petitioner or his Advocate by giving notice of the fact that the respondent No.1 had expired. As was informed to the Tribunal, in writing, by the Counsel who was representing the deceased respondent No.1, the Tribunal should have informed the same fact to either the Counsel for the petitioner or the petitioner himself. That having not been done, has resulted in delay in bring the LRs of the deceased respondent No.1 on record. The other aspects which were considered by the learned Tribunal for rejecting the the petitioner's application and allowing the application for abatement of the appeal was improper. Under the circumstances, it could not be said that the petitioner was negligent in filing the applications for bringing the LRs. of deceased respondent No.1 on record and for setting aside the abatement.

9. Under the circumstances, the writ petition is allowed. Rule made absolute in terms of prayer clause (a), subject to the payment of costs of Rs.1500/- to the heirs of respondent No.1, which shall be either paid

directly to them or shall be deposited in the Court.

At this stage, learned Counsel for the respondent informs that the learned Tribunal has not decided the application for condonation of delay in filing the appeal for last 5 years, which is pending from 2002 onwards. It is directed that the Tribunal shall decide the application for condonation of delay expeditiously i.e. within a period of six weeks from today. Parties to appear before the Tribunal on 13.2.2007 at 10.00 O'Clock.

S.K. SHAH, J.

ssm.